

THE HONORABLE KYMBERLY K. EVANSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMON RIVIERA; CURTIS BANTA;
YONKMAN CONSTRUCTION, INC.; PARAS
HOMES, LLC; CONDRON HOMES, LLC;
GARCO CONSTRUCTION, INC.; ARLINGTON
360, LLC; HUSEBY HOMES, INC.; SPOKANE
HOME BUILDERS ASSOCIATION;
WASHINGTON STATE ASSOCIATION OF UA
PLUMBERS, PIPEFITTERS AND HVAC/R
SERVICE TECHNICIANS; LOCAL 32 OF UA
PLUMBERS, PIPEFITTERS AND HVAC/R
SERVICE TECHNICIANS; WASHINGTON
AND NORTHERN IDAHO DISTRICT
COUNCIL OF LABORERS; CITIZEN ACTION
DEFENSE FUND; NATIONAL PROPANE GAS
ASSOCIATION; AVISTA CORPORATION;
CASCADE NATURAL GAS CORPORATION;
and NORTHWEST NATURAL GAS
COMPANY,

Plaintiffs,

v.

KJELL ANDERSON, JAY ARNOLD, TODD
BEYREUTHER, JUSTIN BOURGAULT,
DAIMON DOYLE, TOM HANDY, ANGELA
HAUPT, ROGER HEERINGA, MATTHEW
HEPNER, CRAIG HOLT, TYE MENSER,
BENJAMIN OMURA, PETER RIEKE, KATY
SHEEHAN, in their official capacities as
Washington State Building Code Council
Members; and BOB FERGUSON, in his official
capacity as Attorney General of Washington,

Defendants.

Case No. 2:24-cv-00677-KKE

**PLAINTIFFS' RESPONSE TO
PROPOSED INTERVENORS'
MOTION TO INTERVENE**

1 The intervention motion states that “[p]laintiffs take no position on the relief requested in
2 this motion.” Dkt. 34 at 2. Plaintiffs respond to confirm this statement.

3 Plaintiffs also respond to clarify procedural history in the U.S. District Court for the Eastern
4 District of Washington. *Id.* at 4. It is true that certain plaintiffs challenged the Energy Code there,
5 that the court denied a motion for a preliminary injunction, and that plaintiffs in that case
6 subsequently dismissed their claims. *Id.* Proposed intervenors take from this that plaintiffs here
7 filed in this court “[e]vidently hoping for a different result.” *Id.*

8 This speculation ignores that when the Eastern District of Washington court heard the
9 preliminary injunction motion “the state rules in question ha[d] been suspended, pending review
10 and possible revisions” by the State Building Code Council in light of the Ninth Circuit’s opinion
11 in *California Restaurant Association v. City of Berkeley*, 65 F.4th 1045 (9th Cir. 2023). *Riviera v.*
12 *Wash. State Bldg. Code Council*, No. 1:23-cv-03070-SAB, Dkt. 74 at 43:10–11 (E.D. Wash. July
13 19, 2023). The Council’s withdrawal of the challenged Energy Code presented “a real question in
14 [the Eastern District of Washington] [c]ourt’s mind whether [that] case involve[d] a legitimate
15 case or controversy.” *Id.* at 75:2–4.

16 The Council since promulgated a revised Energy Code. *See* WSR 24-03-084; WSR 24-03-
17 085. Plaintiffs in this case include numerous residents of this district, *see* Dkt. 1 ¶¶ 12, 17, 18, 26,
18 and this is where the State Building Code Council resides, *see id.* ¶ 10, 34. The revised Energy
19 Code is in effect, and there is a live controversy. The result here should indeed differ.

1 DATED: June 28, 2024

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16 I certify that this memorandum contains 271 words, in
17 compliance with the local Civil Rules.
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